

REMARKS

Reconsideration and withdrawal of the rejections of the claimed invention is respectfully requested in view of the amendments, remarks and enclosures herewith, which place the application in condition for allowance.

I. STATUS OF CLAIMS AND FORMAL MATTERS

Claims 8, 11, 12, 14-18, 20, 21, 30 and 32-36 are pending in this application. The element of previous claim 31 has been inserted into claim 8 and claims 31 and 34 has been cancelled. No new matter has been added by this amendment.

It is submitted that the claims, herewith and as originally presented, are patentably distinct over the prior art cited in the Office Action, and that these claims were in full compliance with the requirements of 35 U.S.C. § 112.

II. THE 35 U.S.C. 112, 2nd PARAGRAPH REJECTION HAS BEEN OVERCOME

Claims 8, 11, 12, 14-18, 20, 21 and 30-36 were rejected as allegedly indefinite for failing to particularly point out and distinctly claim the subject matter which applicants regards as the invention. The applicants request reconsideration of this rejection for the following reasons.

While it is believed that one of ordinary skill in the art would have understood the meaning of the claim as previous presented, in order to advance prosecution, the applicants have repeated the members of the Markush groups as the scope of the claim has not been changed.

III. THE 35 U.S.C. 102(b) REJECTION HAS BEEN OVERCOME

Claims 8, 11, 12, 14-15, 21 and 31-36 were rejected as allegedly being anticipated by Rosch et al. (US 5,700,758 -"Rosch"). The applicants request reconsideration of this rejection for the following reasons.

MPEP 2131 states that to anticipate a claim, the reference must teach every element of the claim. In addition, these elements must be presented in such a manner that "[t]he identical invention must be shown in as complete detail as is contained in the ... claim." *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989).

However, the Rosch reference does not meet this standard for establishing anticipation.

Rosch refers to compounds of formula (I), which has some overlap with the compound of formula (I) in the applicants claims. However, these compounds are used by Rosch as safeners, i.e. compounds which reduce the harmful effects of herbicides. (A common problem for herbicides is that not only are they able to kill unwanted plants such as weeds, but they also kill

at least some of the desired plant to be grown, e.g. a field crop like maize.) This fact appears to have been acknowledged by the Examiner in the Office Action (see page 11, lines 3-7).

Therefore, the effect of safeners have nothing to do with affecting the herbicidal activity of an herbicide against an unwanted plant. This fact is confirmed by the paper by Joanna Davies ("Herbicidal Safeners – Commercial Products and Tools for Agrochemical Research") which was provided with the Office Action. As such, there is simply no basis in fact for the assertion that Rosch inherently teaches increasing weed control; Rosch simply represents the known state of the art with regard to safeners, i.e. they are able to reduce the harmful effects of herbicides.

Furthermore, Rosch also refers to at least four different classes of herbicides: (A) phenoxyphenoxy- and heteroaryloxyphenoxy-carboxylates; (B) chloroacetanilide; (C) thiocarbamate herbicides (erroneously referred to as cyclohexanedione derivatives in Rosch); and (D) cyclohexanedione derivatives and a broader class of compound (I) than is currently claimed by the applicants. As such, Rosch does not teach "the identical invention in as complete detail as is contained in the applicants' claim which is directed to a smaller set of pyrazoline compounds ("compound (I)") in combination with clodinafop-propargyl, diclofop, diclofop-methyl, fenoxaprop-P-ethyl, fenoxaprop-P, fenoxaprop-ethyl, fenoxaprop and agriculturally acceptable salts thereof.

This is especially true for claims 18, 20 and 21 which are directed to specific combinations of compound (I) – mefenpyr-diethyl and either fenoxaprop-P-ethyl, clodinafop-propargyl or diclofop-methyl.

Therefore, Rosch does not anticipate the applicants' claimed invention because Rosch does not suggest that the use of safeners could be used to enhance herbicidal activity and because Rosch does not teach the identical invention in as complete detail as is contained in the applicants' claims either for the method of increasing weed control or for the compositions used in the method of increasing weed control.

IV. THE 35 U.S.C. 103(a) REJECTION HAS BEEN OVERCOME

Claims 16-18, 20 and 30 were rejected as allegedly being obvious by Rosch et al. (US 5,700,758 -"Rosch"). The applicants request reconsideration of this rejection for the following reasons.

As the deficiencies of Rosch have been identified above in the anticipation rejection and by definition are not further addressed, claims 16-18, 20 and 30 would also not be obvious for the reasons cited above alone.

In addition, the applicants provided evidence of unexpected results in their specification which is a further indicia of unobviousness, i.e. that a safener could improve weed control when administered with an appropriate herbicide. The state of the art for safeners was such that safeners would only have some expectation of success that a safener may reduce the phytotoxic effect of a desired plant and no expectation that they would have increased the effectiveness in weed control.

In the data provided in Table 2 and Table 3, each time mefenpyr-diethyl was used alone, no herbicidal effect was observed. However, when mefenpyr-diethyl used in combination with a herbicide cited in the applicants' claimed method, the level of weed control unexpectedly increased.

Therefore, the applicants' claimed method for increasing weed control would also be unobvious in light of the unexpected results presented in the specification and when coupled with the deficiencies of Rosch mentioned in the anticipation rejection above, Rosch clearly does not establish a *prima facie* case of obviousness for the presently claimed invention.

CONCLUSION

In view of the remarks and amendments herewith, the application is believed to be in condition for allowance. Favorable reconsideration of the application and prompt issuance of a Notice of Allowance are earnestly solicited. The undersigned looks forward to hearing favorably from the Examiner at an early date, and, the Examiner is invited to telephonically contact the undersigned to advance prosecution. The Commission is authorized to charge any fee occasioned by this paper, or credit any overpayment of such fees, to Deposit Account No. 50-0320.

Respectfully submitted,
FROMMER LAWRENCE & HAUG LLP

By: /Howard C. Lee/
Marilyn M. Brogan Howard C. Lee
Reg. No. 31,223 Reg. No. 48,104
Telephone: (212) 588-0800
Facsimile: (212) 588-0500